

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDUARDO VALLE,	)	No. C 03-05612 JW (PR)
Petitioner,	)	
vs.	)	ORDER DENYING PETITION FOR
	)	A WRIT OF HABEAS CORPUS
D. L. RUNNELS, Warden,	)	
Respondent.	)	

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Petitioner, a state prisoner, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his state conviction. After a court trial in Superior Court of the State of California in and for the County of Santa Clara, petitioner was found guilty of second degree murder (Cal. Penal Code § 187), two counts of assault with a deadly weapon (Cal. Penal Code § 245(a)(1)), and that he was personally armed with a knife and inflicted great bodily injury (Cal. Penal Code § 12022(b)(1)). On September 24, 1999, petitioner was sentenced to an aggregate state prison term of 22 years to life.

Petitioner appealed his conviction. The California Court of Appeal affirmed

1 the conviction and the California Supreme Court denied his petition for review on  
2 September 18, 2002.

3 Petitioner timely filed the instant federal habeas petition on December 15,  
4 2003, alleging insufficient evidence to support the murder conviction, improper jury  
5 instructions, and cumulative error. Per order filed on November 16, 2004, this Court  
6 found that the petition, liberally construed, stated cognizable claims under § 2254,  
7 and ordered respondent to show cause why a writ of habeas corpus should not be  
8 granted. Respondent has filed an answer, and petitioner has not filed a traverse.

### 9 10 **FACTUAL BACKGROUND**

11 The California Court of Appeal summarized the facts of the case as follows:

12 On September 18, 1998, sometime after 10:00 p.m., George  
13 Molina and Arthur and Walter Martinez walked to a residence at  
14 8090 Springdale Court in Gilroy. Molina entered, and Arthur and  
15 Walter stood outside. All three were wearing articles of red clothing.  
16 Minutes later, [petitioner and Hernandez]<sup>1</sup> and a third man  
17 approached Walter and Arthur. Arthur and [petitioner] said “what’s  
18 up” to each other. Molina came back outside, and at that point,  
19 [petitioner and Hernandez] and their friend attacked Molina, Arthur,  
20 and Walter. Arthur suffered stab wounds in the stomach, arm, head  
21 and buttocks. Molina was stabbed in the upper chest, stomach, and  
22 forearm and suffered a collapsed lung. Walter was stabbed in the  
23 chest and later died.

24 Molina testified that someone the size of [petitioner] attacked  
25 him, but he could not see who it was. Arthur testified that he tried to  
26 help Molina, but [petitioner] stabbed him and then ran. Arthur  
27 chased after him but stopped because he was bleeding and saw a  
28 police officer. Neither Arthur or Molina ever saw a knife, and they  
did not have knives themselves.

Elizabeth Centeno, Edelmira Mendoza, Carlos Ybarra, and  
Tony Zepeda lived at 8090 Springdale Court. They testified that  
earlier in the day, there had been a fight between the residents of  
8090 Springdale, including Ybarra and Alfredo Zepeda, and their

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<sup>1</sup> The state appellate court refers to “dependants” throughout its order because petitioner filed his direct appeal with a co-defendant Ricardo Hernandez. Hernandez was also found guilty of second degree murder as well as three counts of assault with a deadly weapon.

1 neighbors at 8070 Springdale. As a result of that fight, Alfredo was  
2 arrested.

3 Later that night when Mendoza came home, Centeno, Ybarra,  
4 and Tony Zepeda told her about the fight and about Alfredo's arrest.  
5 A short time later, Molina, Arthur, and Walter arrived. Ybarra then  
6 saw [petitioner and Hernandez] and a third person approach the  
house. Ybarra and Tony also identified [petitioner and Hernandez].  
Within moments, [petitioner] attacked Molina. Molina fought back  
but eventually fell down. [Petitioner and Hernandez] and their friend  
fled, and Mendoza, Ybarra, and Tony chased them.

7 As this incident was happening, Officer Nestor Quiones and  
8 the Gilroy Police Department was investigating a call from  
9 [petitioner's] mother about slashed tires and suspects heading toward  
Springdale Court. He noticed a pickup truck with slashed tires and a  
10 man - [petitioner's] father - standing outside, pointing toward  
Springdale Court. He then saw [petitioner] running his way and  
11 detained him. [Petitioner] was scared and said people were fighting  
at the end of the court and that he was chasing people who had been  
12 slashing tires. Quiones saw that [petitioner] had been stabbed.  
[Petitioner] kept trying to leave, but Quiones made him sit by the  
13 curb.<sup>2</sup> During this time, Quiones observed two young Hispanic  
males running in front of the houses on Springdale Court. Several  
14 other people, including Mendoza, approached and started yelling and  
challenging [petitioner]. Mendoza told Quiones that [petitioner] had  
15 been fighting at her house. [Petitioner] said, "'Shut up you stupid  
bitch. You don't know shit.'" Quiones ordered the others to leave.

16 On September 19, Officer Steve Baty of the Gilroy Police  
Department arrested Hernandez. In a taped interview, Hernandez  
17 denied participating in the fight on Springdale Court. He said he was  
with a man named Valentine watching a boxing match on television.  
At around 8:30 or 9:00 p.m., after the match, Hernandez went home  
18 and straight to bed. He said that his mother checked on him at  
around 11:00 p.m. that night. His mother woke him the next  
19 morning at 9:00 a.m.

20 Baty went to the house where Hernandez said he had watched  
the fight. A resident there was unable to identify Hernandez from a  
21 photo line-up. Others at the house recalled that Valentine had been  
there with some friends. Baty tried but was unable to locate  
22 Valentine.

23 Police also interviewed Tony and Ybarra. Tony reported that  
he recognized all three assailants, one of whom was named Kiki. He  
24 said that all three lived near each other on Forest Street. Ybarra also  
said that one of the men was named Kiki.

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26 <sup>2</sup> [Petitioner] moved over to a bush. Police later found a knife with [petitioner's]  
27 fingerprints and Molina's blood on it. [footnote renumbered; originally footnote 3]

1 Monica Riojas lives at 8091 Springdale Court across from the  
2 Zepeda residence. She had dated Hernandez in the past, but at trial  
3 testified that she and he were just friends. However, after Hernandez  
4 was arrested, she wrote letters to him, and among other things,  
5 professed her love.

6 She testified that she had seen the earlier fight that resulted in  
7 Alfredo's arrest. Later that day, she was talking to Hernandez in  
8 front of his house, when a group of young people walked by, and one  
9 yelled "fucking scraps," which is an insult used by Norteños against  
10 Sureños. Hernandez wanted to find out who it was, but Riojas  
11 persuaded him not to. She said three of those people slashed tires as  
12 they made their way toward Springdale to the Zepeda residence. She  
13 paged Hernandez, but he did not respond. A short time later, she  
14 saw [petitioner] and two others go to the Zepeda residence. They  
15 yelled "what's up" to the three people, and then all six began to  
16 fight. After a while, [petitioner] and the two others fled. Twenty  
17 minutes later, Hernandez phone Riojas, and she told him about the  
18 fight.

19 Riojas testified that Hernandez was not one of the other two  
20 men with [petitioner]. She said that after she became involved in the  
21 case, [petitioner's] family and other threatened her. She also  
22 reported that her brother was beaten, and her mother's car was  
23 vandalized.

24 People v. Valle, No. H020638, slip op. at 3-5 (Cal.Ct.App. Jul. 10, 2002) (Resp't.  
25 Ex. 26).

## 26 DISCUSSION

### 27 A. Standard of Review

28 This court may entertain a petition for a writ of habeas corpus "in behalf of a  
person in custody pursuant to the judgment of a State court only on the ground that  
he is in custody in violation of the Constitution or laws or treaties of the United  
States." 28 U.S.C. § 2254(a).

The writ may not be granted with respect to any claim that was adjudicated  
on the merits in state court unless the state court's adjudication of the claim: "(1)  
resulted in a decision that was contrary to, or involved an unreasonable application  
of, clearly established Federal law, as determined by the Supreme Court of the

1 United States; or (2) resulted in a decision that was based on an unreasonable  
2 determination of the facts in light of the evidence presented in the State court  
3 proceeding.” Id. § 2254(d).

4 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if  
5 the state court arrives at a conclusion opposite to that reached by [the Supreme]  
6 Court on a question of law or if the state court decides a case differently than [the]  
7 Court has on a set of materially indistinguishable facts.” Williams v. Taylor, 529  
8 U.S. 362, 412-13 (2000). “Under the ‘reasonable application clause,’ a federal  
9 habeas court may grant the writ if the state court identifies the correct governing  
10 legal principle from [the] Court’s decisions but unreasonably applies that principle  
11 to the facts of the prisoner’s case.” Id. at 413.

12 “[A] federal habeas court may not issue the writ simply because the court  
13 concludes in its independent judgment that the relevant state-court decision applied  
14 clearly established federal law erroneously or incorrectly. Rather, that application  
15 must also be unreasonable.” Id. at 411. A federal habeas court making the  
16 “unreasonable application” inquiry should ask whether the state court’s application  
17 of clearly established federal law was “objectively unreasonable.” Id. at 409.

18 A federal habeas court may grant the writ if it concludes that the state court’s  
19 adjudication of the claim “resulted in a decision that was based on an unreasonable  
20 determination of the facts in light of the evidence presented in the State court  
21 proceeding.” 28 U.S.C. § 2254(d)(2). The court must presume correct any  
22 determination of a factual issue made by a state court unless the petitioner rebuts the  
23 presumption of correctness by clear and convincing evidence. 28 U.S.C.  
24 §2254(e)(1).

25 The only definitive source of clearly established federal law under 28 U.S.C.  
26 § 2254(d) is in the holdings (as opposed to the dicta) of the Supreme Court as of the  
27

1 time of the state court decision. Id. at 412; Clark v. Murphy, 331 F.3d 1062, 1069  
2 (9th Cir. 2003). While circuit law may be “persuasive authority” for purposes of  
3 determining whether a state court decision is an unreasonable application of  
4 Supreme Court precedent, only the Supreme Court’s holdings are binding on the  
5 state courts and only those holdings need be “reasonably” applied. Id.

6 B. Claims and Analysis

7 1. Insufficient Evidence

8 Petitioner claims that there was insufficient evidence to support the  
9 murder conviction based on the theory of aiding and abetting as given in the jury  
10 instructions. Petitioner claims that the only viable theory of aiding and abetting was  
11 the “natural and probable consequences” doctrine, but that since the jury was not  
12 instructed on this doctrine at trial, it can not now be used to support the unlawful  
13 conviction based on otherwise insufficient evidence.

14 The relevant inquiry on review of a constitutional challenge to the sufficiency  
15 of the evidence to support a criminal conviction is “whether, after viewing the  
16 evidence in the light most favorable to the prosecution, any rational trier of fact  
17 could have found the essential elements of the crime beyond a reasonable doubt.”  
18 Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original). The reviewing  
19 court “faced with a record of historical facts that supports conflicting inferences  
20 must presume - even if it does not affirmatively appear on the record - that the trier  
21 of fact resolved any such conflicts in favor of the prosecution, and must defer to that  
22 resolution.” Id. at 326.

23 In light of 28 U.S.C. § 2254(d), a federal habeas court applies the standard of  
24 Jackson with an additional layer of deference. Juan H. V. Allen, 408 F.3d 1262,  
25 1274 (9th Cir. 2005). A federal habeas court must ask whether the operative state  
26 court decision reflected an unreasonable application of Jackson to the facts of the  
27

case. Id. at 1275. A writ may be granted only if the state court's application of the Jackson standard was "objectively unreasonable." Id. at 1275 n.13 (quoting Williams, 529 U.S. at 409).

Second degree murder was defined in CALJIC No. 8.30 as "the unlawful killing of a human being when: 1. [t]he killing resulted from an intentional act, 2. [t]he natural consequences of the act are dangerous to human life, and 3. [t]he act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life. When the killing is the direct result of such an act, it is not necessary to prove that the defendant intended that the act would result in the death of a human being." (Resp't. Ex. 4 at 913.) In other words, second degree murder requires a finding of implied malice. See CALJIC No. 8.11; Resp't. Ex. 4 at 908. An aider and abettor was defined in CALJIC No. 3.01 as follows: "A person aids and abets the [commission] ... of a crime when he; 1. [w]ith knowledge of the unlawful purpose of the perpetrator and 2. [w]ith the intent or purpose of committing or encouraging or facilitating the commission of the crime, and 3. [b]y act or advice aids, promotes, encourages or instigates the commission of the crime." (Resp't. Ex. 4 at 902.)

Here, the California Court of Appeal found that there was sufficient evidence to support the second degree murder conviction on the theory of aiding and abetting.

Viewed in the light most favorable to the verdicts (see People v. Rodriguez (1999) 20 Cal.4th 1, 12), the evidence reveals that on September 18, Molina, Walter, and Arthur, among others, walked by defendant Hernandez, hurled a gang insult at him, and slashed the tires on [petitioner's] father's truck. They continued walking and ultimately congregated outside 8090 Springdale Court. [Petitioner], Hernandez, and a third person followed them to Springdale Court. At least [petitioner] and the third person were armed with knives. Within moments of arriving, [petitioner and Hernandez] and their confederate attacked Molina, Walter, and Arthur, stabbing all three of them, and killing Walter.

Given this evidence and the expert testimony about the underlying animosity between Norteño and Sureño gangs, the jury could have reasonably found that [petitioner], Hernandez, and their

1 confederate intended to retaliate against Molina, Arthur, and Walter  
2 by violently attacking them. The jury could further have found that  
3 all of them knew before the attack, or at least once it commenced,  
4 that they had knives, intended to use them, and were using them to  
5 stab their victims. Under the circumstances, therefore, the jury could  
6 reasonably conclude that [petitioner and Hernandez] and their  
7 confederate intended to attack Walter, they knew their confederate  
8 was stabbing him in a way that was dangerous to his life in  
9 conscious disregard for that danger, and they intended to encourage  
10 or facilitate their confederate's conduct. In other words, the jury  
11 could reasonably convict [petitioner and Hernandez] of aiding and  
12 abetting second degree murder - a killing with implied malice. (Cf.  
13 People v. Woods (1991) 226 Cal.App.3d 1037; People v. Gonzales  
14 (1970) 4 Cal.App.3d 593.)

15 People v. Valle, slip op. at 6-7.

16 The state appellate court correctly applied the standard of Jackson in  
17 concluding that a jury could have found the essential elements of second degree  
18 murder beyond a reasonable doubt after viewing the evidence in the light most  
19 favorable to the prosecution. See Jackson, 443 U.S. at 319. The state court  
20 concluded that a reasonable jury could find that the perpetrator of Walter's murder  
21 acted with implied malice, i.e., he was armed with a knife and intentionally assaulted  
22 Walter with that knife, the natural consequences of such an attack was dangerous to  
23 Walter's life, and that the perpetrator used that knife on Walter knowing that such  
24 conduct would endanger Walter's life and in conscious disregard for that life. See  
25 CALJIC No. 8.30. Since petitioner was present at the time of the gang insult, was  
26 also armed with a knife, and joined in the attack, the court concluded that under the  
27 circumstances, a reasonable jury could find that petitioner aided and abetted in  
28 perpetrator's attack upon Walter knowing the perpetrator's unlawful purpose and  
intending to aid in the commission of the crime. See CALJIC No. 3.01. Petitioner's  
claim does not merit federal habeas relief.

Petitioner's claim that the trial court's failure to give instructions on the  
doctrine of "natural and probable consequences" requires a reversal of his conviction  
is without merit. The prosecution did not charge petitioner on the doctrine of

“natural and probable consequences,” which, according to the California Court of Appeal, is a “theory of *consequential* vicarious liability.”<sup>3</sup> People v. Valle, slip op. at 9 (emphasis in original). Rather, the prosecution argued a more direct theory: aiding and abetting second degree murder. (Resp’t. Ex. 18 at 13.) Therefore it was not necessary to instruct the jury on the doctrine of “natural and probable consequences” as petitioner contends. The trial court did not err in failing to give such instructions sua sponte.

The California Court of Appeal’s decision was not objectively unreasonable. See Williams, 529 U.S. at 409; Juan H., 408 F.3d at 1275 n.13. The state appellate court reasonably determined that there was ample evidence to support petitioner’s conviction for second degree murder. Petitioner is not entitled to federal habeas relief on this claim. See 28 U.S.C. § 2254(d). Accordingly, petitioner’s claim is DENIED.

## 2. Improper Jury Instructions

Petitioner’s second claim is that the trial court erred in including an inapplicable second degree felony murder instruction to the jury which was highly prejudicial and warrants reversal of his conviction. Specifically, petitioner contends that instructing the jury in the full language of CALJIC No. 8.51, which included the sentence, “[i]f a person causes another’s death while committing a felony which is dangerous to human life, the crime is murder,” required the jury to conclusively presume murder if the death resulted during the commission of a felony as well as relieved the jury of its obligation to find the essential element of malice needed for a

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<sup>3</sup> According to the state appellate court, “[t]he natural-and-probable-consequences is based on the recognition that “aiders and abettors should be responsible for the criminal harms they have naturally, probably and foreseeably put in motion.” [Citations.] The aider and abettor need not have actual advance knowledge or intent concerning the additional harm for which he or she may be held liable. Rather, criminal knowledge and intent are constructively imputed because the additional harm is reasonably foreseeable.” People v. Valle, slip op. at 8-9.

1 second degree murder conviction.

2 To obtain federal collateral relief for errors in the jury charge, a petitioner  
3 must show that an ailing instruction by itself so infected the entire trial that the  
4 resulting conviction violates due process. See Estelle v. McGuire, 502 U.S. at 72;  
5 see also Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974) (“[I]t must be  
6 established not merely that the instruction is undesirable, erroneous or even  
7 “universally condemned,” but that it violated some [constitutional right].”). The  
8 instruction may not be judged in artificial isolation, but must be considered in the  
9 context of the instructions as a whole and the trial record. See Estelle, 502 U.S. at  
10 72. In other words, the court must evaluate jury instructions in the context of the  
11 overall charge to the jury as a component of the entire trial process. United States v.  
12 Fradley, 456 U.S. 152, 169 (1982) (citing Henderson v. Kibbe, 431 U.S. 145, 154  
13 (1977)).

14 Petitioner’s claim is without merit. The allegedly prejudicial instruction  
15 regarding felony murder must not be considered in isolation but in context of the  
16 instructions as a whole and the trial record. See Estelle, 502 U.S. at 72. The  
17 California Court of Appeal’s was correct in its conclusion that the instruction was  
18 not prejudicial in the overall context of the trial:

19 Here, the jury was repeatedly told that murder requires a  
20 finding of malice, express or implied. The court explained that  
21 implied malice involved the commission of an act that is dangerous  
22 to human life. The court emphasized that to prove murder, the  
23 prosecutor had to prove malice beyond a reasonable doubt. The  
24 challenged instructional language echoed the “dangerous to human  
25 life” language of the implied malice instruction. Moreover, its  
26 immediate context indicated that the purpose of the language was to  
27 distinguish murder from manslaughter and not offer an additional  
theory of liability. In this regard, we note that the court did not give  
the usual felony murder instructions that explain this theory. (See,  
e.g., CALJIC Nos. 8.21 [first degree felony murder]; 8.32 [second  
degree felony murder].) The court also removed references to felony  
murder in other instructions that it gave. Last, we note that the  
prosecutor never referred to this sentence, mentioned felony murder,  
or in any way suggested that [petitioner and Hernandez] could be

1 convicted of murder without a finding that the perpetrator killed  
2 Walter with malice. On the other hand, two defense attorneys heard  
3 the instruction and did not object to it. Although the failure to object  
4 did not waive the issue on appeal, it reveals that they perceived little  
5 or no danger that the jury might unduly focus on and misunderstand  
6 the purpose of the court's language.

7 People v. Valle, slip op. at 12-13.

8 The felony murder instruction in the context of the instructions as whole did  
9 not so infect the entire trial process such that petitioner's conviction violates due  
10 process. See Estelle, 502 U.S. at 72. The jury was repeatedly instructed on the  
11 element of malice, which was not only given separately in CALJIC No. 8.11  
12 (Resp't. Ex. 4 at 908.), but was also a necessary element for finding second degree  
13 murder as discussed in petitioner's first claim above. See supra at 7. Accordingly,  
14 the state court was not objectively unreasonable in applying Supreme Court  
15 precedent in rejecting petitioner's claim. See 28 U.S.C. § 2254(d). Petitioner's  
16 claim is DENIED.

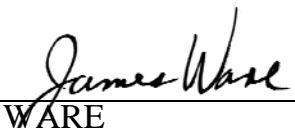
### 17 3. Cumulative Error

18 Petitioner's final claim is that the cumulative effect of the several trial  
19 errors that occurred prejudiced him to the extent that they warrant a reversal of his  
20 conviction. See Alcala v. Woodford, 334 F.3d 862, 893-95 (9th Cir. 2003)  
21 (reversing conviction where multiple constitutional errors hindered defendant's  
22 efforts to challenge every important element of proof offered by prosecution).  
23 However, where there is no single constitutional error existing, nothing can  
24 accumulate to the level of a constitutional violation. See Mancuso v. Olivarez, 292  
25 F.3d 939, 957 (9th Cir. 2002). Petitioner has no basis for a claim of cumulative  
26 error because his petition failed to raise even a single constitutional error that had a  
27 prejudicial effect. See Mancuso, 292 F.3d 939 at 957. The state court's rejection of  
28 this claim was not contrary to or an unreasonable application of Supreme Court  
precedent. See 28 U.S.C. § 2254(d). Petitioner's claim is DENIED.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of habeas corpus is  
DENIED.

DATED: August 2, 2007

  
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JAMES WARE  
United States District Judge